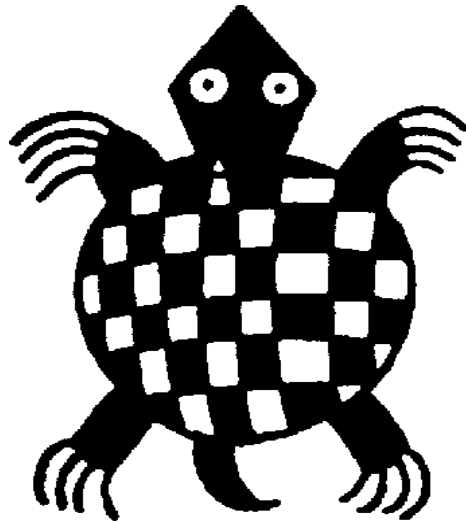


MODULE 1

Introduction to Tribal Concepts



MODULE 1

Introduction to Tribal Concepts

SUGGESTED TIME

45 minutes

Plus optional treaty exercise (additional 30 minutes)

Plus optional video (additional 20 minutes)

OBJECTIVES

After completing this module, participants will:

- Understand the goals and objectives for the course.
- Understand key terms and concepts that will be used throughout the course.

INSTRUCTIONAL ACTIVITIES AND THEIR ORDER

- Presentation—overheads 1 to 12 (45 minutes)
- Optional treaty exercise (30 minutes)
- Optional video—“Federal Indian Trust Responsibility” (20 minutes)

INSTRUCTIONAL MATERIALS

- Overheads/overhead projector/screen
- Participant notebook with overheads and exercises
- Department of Interior trust video and material
- Handouts
 - Federally recognized tribe list from the *Federal Register*
 - Sample treaties
 - Presidential memorandum on government-to-government relations
- Treaty exercise material (instructions, copies of treaties)
- Map of Indian country



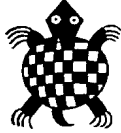
The turtle has major importance to the southeastern tribes.

WORKING EFFECTIVELY WITH TRIBAL GOVERNMENTS

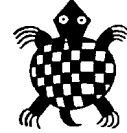


Talking Points:

- Trainers may want to begin by having the participants introduce themselves, state their organization, and share their experiences working with tribes.
- Trainers should give a brief overview of the training program and the agenda before reviewing the training objectives.



Training Objectives



- Increase EPA staff understanding of tribal legal and cultural issues
 - Acquaint EPA staff with the EPA Indian policy and its place in the management of environmental programs
 - Provide suggestions and practical tips for EPA staff members who work with tribes
-

Talking Points:

Before the training begins, trainers should post the training objectives on a flip chart. The flip chart should state:

Training Goal

This workshop should lead to improved environmental protection of Indian people and land as a result of improved EPA understanding of Indian ways, improved EPA and Indian communications, and more effective allocation to and use of EPA resources within Indian country.

- **Objective 1:** Develop an understanding and awareness of tribal issues. Discussions will focus on several topics:
 - ▶ the unique status of Native Americans;
 - ▶ Native American communities, cultures, and protocols;
 - ▶ the history of federal Indian law and policy;
 - ▶ environmental protection on Indian lands; and
 - ▶ the structure and goals of EPA's Indian Program.
- **Objective 2:** Acquaint EPA staff with the EPA Indian policy and its place in the management of environmental programs. Demonstrate the importance of consultation with tribal governments. This is an integral part of EPA's tribal policy and will be covered in detail in Module 3.



Training Objectives (continued)



- Increase EPA staff understanding of tribal legal and cultural issues
 - Acquaint EPA staff with the EPA Indian policy and its place in the management of environmental programs
 - Provide suggestions and practical tips for EPA staff members who work with tribes
-

Talking Points (continued):

- **Objective 3:** Provide suggestions and practical tips for EPA staff members who work with tribes. The relationship between the federal government and tribes is complex. To work effectively with tribes, EPA employees must be aware of not only legal and regulatory issues, but cultural factors as well. Module 4 of this course material will touch on some of these issues and provide information on how EPA personnel can demonstrate this understanding during their interactions with tribes.



INTRODUCTION TO TRIBAL CONCEPTS

Talking Points:

- This section introduces participants to the basic tribal concepts that will be used throughout the course.



Key Terms



- Who is an Indian?
 - Person of Indian descent
 - No single criterion for Indian identity
 - Membership of an Indian tribe
 - Who are Native Americans?
 - Indians and Alaska Natives
 - Native Hawai'ians
-

Talking Points:

- A basic definition of who is an Indian is tribal membership. Many people of Indian descent do not fall in this category. In addition, federal agencies have several different definitions of their own. This may determine who is eligible to participate in their programs. Tribes also have varying eligibility criteria for tribal membership.
- Tribal Indians and tribes have a special relationship with the United States government that derives from their political status, not race or ethnicity.
- One of the legal definitions of the term “Indian” includes all persons of Indian descent who are members of any recognized Indian tribe now under federal jurisdiction; all descendants of such members who were residing within the present boundaries of any Indian reservation on June 1, 1934; and all persons of one-half or more Indian blood.
- The term “Native American” generally includes Indians and Alaska Natives. Although Native Hawai'ians can be described as Native Americans because they are not descendants of the European colonies, the Native Hawai'ian community has a different relationship with the U.S. governmental system. They are not recognized as a legal, political entity or “government.”
- The terms Native American, American Indian, and Indigenous Peoples are frequently used interchangeably. Some tribal members may prefer the term “Indian” or “American Indian;” however, it is always preferable to refer to someone as a member of their particular tribe. Eskimos and Aleuts in Alaska prefer the term “Alaska Native.”

*For more information consult
Chapter 1, page 2 and
Chapter 2, page 27 of the
Resource Guide.*



Key Terms (continued)



- Who is an Alaska Native?
 - ▶ An aboriginal person of Alaska
 - ▶ Indian, Inuit/Eskimo, Aleut, etc.
-

Talking Points (continued):

- In 1934, the Indian Reorganization Act (IRA) definitions of “Indian” included “Eskimos and other aboriginal people of Alaska.” A 1936 amendment to IRA made clear that “groups of Indians in Alaska” could adopt constitutions, bylaws, and seek charters of incorporation under which to organize their business enterprises.

Due to the great distances and harsh weather conditions in Alaska, native governments have primarily and traditionally operated at the local level. These local native governments are not a subdivision of the Alaska state government. There are over 1,200 individual native village and community associations operating in Alaska. There are 227 federally recognized tribes in Alaska.

In 1971, Congress passed the Alaska Native Claims Settlement Act (ANCSA). The Act affected the tribal governments greatly. Under the terms of ANCSA, aboriginal title in Alaska was extinguished. Two of the three Indian reservations in Alaska were disestablished. The recent *Venette* decision held that most of the lands held by Alaska Native Villages are not Indian country (although some Indian country still remains in Alaska in other forms).

*For more information consult
Chapter 1, page 16 of the
Resource Guide.*



Key Terms (continued)



- What is an Indian tribe?
 - A community of Indians who are ethnologically similar, but as a community are also recognized in a legal-political sense
-

Talking Points (continued):

- A community of Indians who are ethnologically similar, but also exist in a legal-political sense.
- An Indian tribe is often a body of people bound together by blood ties who are socially, politically, and religiously organized, may live together in a defined territory, and speak a common language.
- When two or three tribes were placed on one reservation, they were called confederated tribes, but they still constitute separate tribes generally.
- Tribes can define their own membership criteria, among other powers.

For more information consult Chapter 1, page 2 and Chapter 2, page 26 of the Resource Guide.



Key Terms (continued)



- What is a “federally-recognized tribe”?
 - Tribes that have a special, government-to-government relationship with the federal government
 - What is Indian country?
 - Legal term that includes Indian reservations, dependent Indian communities, and Indian allotment lands
-

Talking Points (continued):

- There are 560 federally-recognized tribes in the United States, including 227 village groups in Alaska. Each tribe is unique in culture, history, and governmental structure.
- Federal recognition is now generally achieved by a statutorily defined administrative process. “Federal recognition” means these tribes have a special legal relationship with the United States government — a government-to-government relationship. (Most tribes were recognized by other means before the Bureau of Indian Affairs process.)
- Non-recognized tribes generally do not have government-to-government relations with federal agencies and are generally ineligible for federal aid designated for Indian tribes; however, they may be eligible for other sources of federal funding, such as EPA environmental justice grants. Some tribes have been recognized by states, even though they do not have federal recognition.
- “Indian country” is a significant legal term that includes Indian reservations, dependent Indian communities, and Indian allotment lands. These terms will be explained in more detail in Module 2.

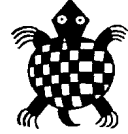
Suggestion: Emphasize the uniqueness of each tribal culture.

Refer participants to the Appendix for a map of Indian country and list of federally- recognized tribes in *Federal Register*.

For more information consult Chapter 2, pages 26 and 27 of the Resource Guide.



Important Concepts



- Treaties
 - Tribal sovereignty
 - Federal trust responsibility
 - Government-to-government relationship
-

Talking Points:

There are at least four major concepts that are essential to understand to work effectively with tribes. These four concepts are:

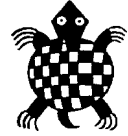
- ▶ treaties;
- ▶ tribal sovereignty, including jurisdiction;
- ▶ federal trust responsibility; and
- ▶ government-to-government relationship.

Suggestion: Tell participants that each of these concepts will be explored in the upcoming slides.

Before going to the next slide, trainers should ask participants to describe a treaty in their own words.



Treaties



A treaty is a legal agreement between nations.

Talking Points:

- A treaty is a legal agreement between sovereign nations.
- Through treaties, Indian nations ceded certain lands and rights to the United States and reserved certain lands (reservations) and rights for themselves. The heavy price Indians paid to retain certain “sovereign” rights was to relinquish most of their land to the United States. Some treaties allow Indians to retain rights to hunt, fish, and gather resources, and allow access to sacred sites on or off a reservation.
- Time does not diminish the effect of treaties. Passage of later federal laws may modify or abrogate them.
- Treaties may also be considered as domestic agreements.

***For more information consult
Chapter 2, pages 32 and 49 of
the Resource Guide.***



The Importance of Treaties



Treaties are significant to all tribes because:

- Treaties establish a pattern of legal and political interaction between two sovereign nations;
 - Treaties form the foundation of Federal Indian law; and
 - The treaty process is based on consultation and negotiation.
-

Talking Points:

- Treaties are significant to all tribes (even to those tribes who did not enter into treaty relations with the federal government) because treaties acknowledge the sovereign nature of tribal governments and reserve for Indian tribes critical rights and access to lands and resources.
- Treaties are still the “law of the land.” For example, in 1979, the United States Supreme Court ruled in *Washington v. Washington State Commercial Passenger Fishing Vessel Association* that a “treaty, including one between the United States and an Indian tribe, is essentially a contract between two sovereign nations...” The Puyallup treaty, upheld by the Supreme Court in the above example, dates from 1855.

(Treaty Exercise A or B— 30 minutes, refer to attachment.)

Suggestion: Trainers should emphasize that not all tribes have treaties and that treaties are not the sole source of the federal government’s responsibility to tribes.

The federal government responsibility to tribes also stems from federal legislation, executive orders, congressional action, Supreme Court decisions, and the history of U.S. - tribal relationships.

Also, trainers may want to discuss specific treaty rights and issues related to environmental protection, such as whether environmental pollution threatening the ability to fish, hunt, and gather resources violates the treaty granting the right to do so.



Tribal Sovereignty



- Entitles tribes to the right to self-government
 - Distinguishes tribal member Indians from other ethnic minorities
 - Helps preserve tribal culture and control over the future of the tribe
-

Talking Points:

- Tribal sovereignty is the right of tribes, as “domestic dependent nations,” to exercise self-determination and the right to self-government, unless these powers have been modified by treaty or by an act of Congress.
- Tribes have the authority to, among other things, assert jurisdiction over their people and their land; define their own tribal membership criteria; create tribal legislation, law enforcement, and court systems; and tax their members.
- The possibility of membership in a sovereign tribe is what distinguishes Indians as a political group rather than solely an ethnic minority.
- Sovereignty ensures control over the future of the tribe and may encourage preservation of tribal culture.
- Because tribes are sovereign, the United States government must honor a direct government-to-government relationship with tribes. No decisions about tribal lands or resources and people should be made without consulting the tribal government.
- The perception of encroachment on tribal sovereignty is one of the most significant issues for tribes today.

***For more information consult
Chapter 2, page 39 of the
Resource Guide.***



Tribal Sovereignty in Oklahoma



- Oklahoma is like other states with a lot of Indian Country; however, jurisdictional problems occur here more than in other states.
 - Sovereignty/jurisdiction is a major concern to all tribes in U.S. and Alaska Native villages.
-

Talking Points:

- There are over 30 tribes in Oklahoma.
- Indian country has diminished considerably since Oklahoma was part of the Indian territory. A large percentage remains Indian country, though not very contiguous. Some of the reservations have been disestablished while at least one still exists in reduced form.
- The five civilized tribes and the Osage Tribe are probably the most regulated tribes in the country. The Cherokee Tribe is the largest.
- The Federal Government has chosen to become involved in tribal government activities in the state of Oklahoma (i.e., election laws and probate).
- Tribal sovereignty/jurisdictional problems are of a major concern to all tribes in the U.S. and Alaska Native Villages.

Suggestion: Before going to the next slide, ask participants if they have heard about EPA's trust responsibility. Also, ask them to suggest how they might define the term "trust responsibility."

For more information consult Chapter 2, page 46 of the Resource Guide.



Federal Trust Responsibility



- Under the general trust responsibility, the federal government is to consult with and consider the interests of the Tribes when engaged in any activity that may affect them.
 - The specific trust responsibility ordinarily arises from some formal action of the U.S.
 - All federal agencies share in the trust responsibility.
-

Talking Points:

- The federal trust responsibility describes the special relationship between the federal government and federally-recognized tribes. The responsibility arises from Indian treaties, statutes, executive orders, and the historical relations between the United States government and Indian tribes.
- What is the trust responsibility?
 - ▶ A responsibility of all agents of the federal government to carry out the federal trust responsibility;
 - ▶ The trust responsibility may be viewed in terms of its general and specific components (although the line between these is not always clear).
 - ▶ The general trust responsibility informs federal policy and provides that the federal government consult with and consider the interests of tribes when taking actions that may affect them.
 - ▶ The general trust responsibility includes the protection of the sovereignty of each tribal government.
 - ▶ The specific component of the trust responsibility ordinarily arises only from some formal action of the U.S., such as statute, treaty, or executive order.
 - ▶ Federal courts often discuss the specific trust responsibility in terms of the elements of a common-law trust: a trustee (the United States), a beneficiary (a tribe or individual Indian), and a trust corpus (lands, funds, etc.).

Suggestion: Have participants reflect on the question: What are some ways that I can fulfill the federal Indian trust responsibility in my work?

Mention the necessity of consulting and working with tribes in order to understand their best interests.

Discuss the federal trust responsibility in relation to environmental protection and what other agencies are involved (Bureau of Indian Affairs, Indian Health Service, etc.).

Refer to the attachment for additional information on the “Federal Indian Trust Responsibility” video.

For more information consult Chapter 2, page 47 of the Resource Guide.



Federal Trust Responsibility (continued)



Talking Points (continued):

- ▶ While applying the trust corpus “element of the trust responsibility” to EPA raises unique issues, it is clear that EPA must ensure that its actions are consistent with the protection of tribal rights arising from treaties, statutes, and executive orders.

(Show the “Federal Indian Trust Responsibility” video produced by the Department of the Interior. Key concepts covered include:

- ▶ *elements of trust;*
- ▶ *standards required of the Trustee; and*
- ▶ *Indian trust interest cannot be arbitrarily compromised.*

See the attached description for more information.)



Government-to-Government Relationship



- Each Indian government must be considered as a distinct entity exercising sovereign powers.
 - EPA employees (as representatives of a federal trustee) must consult with tribal governments on matters that directly affect the tribes.
-

Talking Points:

- Consider each Indian government as a distinct entity exercising sovereign powers to meet the present and future needs of its people.
- EPA must consult with tribal governments on matters that directly affect the tribes.
- Federal laws recognize that tribes may adopt whatever form of government that best suites their own practical cultural or religious needs.
- President Clinton's Executive Memorandum of April 29, 1994, directed each agency to:
 - ▶ be responsible for ensuring that the agency operates within a government-to-government relationship with federally-recognized tribes; and
 - ▶ consult, to the greatest extent practicable and to the extent permitted by law, with tribal governments prior to taking actions that affect the tribes.
- Most tribal government structures combine traditional features with Western forms. Traditional tribal governments' political leaders are often chosen by clans, families, or religious laws, and are often chosen by consensus. Some tribal governments use a democratic process to elect officials; and some operate under written or unwritten constitutions.

Suggestion: Discuss forms of the tribal government structures for tribes at your locations or give examples.

For more information, refer participants to President Clinton's memo in the Appendix.

For more information consult Chapter 1, page 1 and Chapter 3, page 56 of the Resource Guide.

Treaty Exercise

Both treaty exercises A and B allow participants to interact, encourage discussion, and facilitate the sharing of ideas; however, treaty exercise A requires more time and provides more opportunity for participant involvement and interaction.

Treaty Exercise A (30 minutes)

- Distribute sets of treaties to participant:
 - 3 to 5 treaties— from local tribes if possible (refer to the Appendix or Kappler’s Treaties for samples of treaties).
- Divide participants into groups of five or six.
- Give instructions to groups:
 - Review treaties individually (10 minutes).
 - Group discussion on treaties (10 minutes).
 - Prepare a group report and answer the following questions (5 minutes):
 - ◆ What was your first reaction to these treaties?
 - ◆ What was your biggest surprise?
 - ◆ What significance do you think treaties have today in relation to environmental protection?
- Identify one person from each group as the representative and present group’s findings (2 to 3 minutes per group).

Treaty Exercise B (15 minutes)

- Distribute samples of treaties.
- Instruct participant to read treaties individually (10 minutes).
- Solicit individual responses to above questions as a large group (5 minutes).